

**§ 161.608 When will a permit cancellation be effective?**

A cancellation decision involving a permit will not be effective for 30 days after the permittee receives a written notice of cancellation from BIA. The cancellation decision will remain ineffective if the permittee files an appeal under §161.607 and part 2 of this title, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the permittee must continue to comply with the other terms of the permit. If an appeal is not filed in accordance with §161.607 and part 2 of this title, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from BIA.

**§ 161.609 Can BIA take emergency action if the rangeland is threatened?**

Yes, if a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Navajo Nation land during the term of a permit, BIA will take appropriate emergency action. Emergency action may include trespass proceedings under subpart H, or judicial action seeking immediate cessation of the activity resulting in or threatening harm. Reasonable efforts will be made to notify the Navajo Nation, either before or after the emergency action is taken.

**§ 161.610 What will BIA do if livestock is not removed when a permit expires or is cancelled?**

If the livestock is not removed after the expiration or cancellation of a permit, BIA will treat the unauthorized use as a trespass. BIA may remove the livestock on behalf of the Navajo Nation, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under subpart H.

**Subpart H—Trespass**

**§ 161.700 What is trespass?**

Under this part, trespass is any unauthorized use of, or action on, Navajo partitioned grazing lands.

**§ 161.701 What is BIA’s trespass policy?**

BIA will:

- (a) Investigate accidental, willful, and/or incidental trespass on Navajo Partitioned Lands;
- (b) Respond to alleged trespass in a prompt, efficient manner;
- (c) Assess trespass penalties for the value of products used or removed, cost of damage to the Navajo Partitioned Lands, and enforcement costs incurred as a consequence of the trespass; and
- (d) Ensure, to the extent possible, that damage to Navajo Partitioned Lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

**§ 161.702 Who will enforce this subpart?**

- (a) BIA enforces the provisions of this subpart. If the Navajo Nation adopts the provisions of this subpart, the Navajo Nation will have concurrent jurisdiction to enforce this subpart. Additionally, if the Navajo Nation so requests, BIA will defer to tribal prosecution of trespass on Navajo Partitioned Lands.
- (b) Nothing in this subpart will be construed to diminish the sovereign authority of the Navajo Nation with respect to trespass.

NOTIFICATION

**§ 161.703 How are trespassers notified of a trespass determination?**

- (a) Unless otherwise provided under tribal law, when BIA has reason to believe that a trespass on Navajo Partitioned Lands has occurred, BIA or the authorized tribal representative will provide written notice within 5 business days to:
  - (1) The alleged trespasser;
  - (2) The possessor of trespass property; and
  - (3) Any known lien holder.
- (b) The written notice under paragraph (a) of this section will include the following:
  - (1) The basis for the trespass determination;
  - (2) A legal description of where the trespass occurred;
  - (3) A verification of ownership of unauthorized property (e.g., brands in the

State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

(6) Potential consequences and penalties for failure to take corrective action; and

(7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by BIA under paragraph (b)(4) of this section.

(c) If BIA determines that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(d) Trespass notices under this subpart are not subject to appeal under part 2 of this title.

**§ 161.704 What can a permittee do if they receive a trespass notice?**

The trespasser will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact BIA in writing to explain why the trespass notice is in error. The trespasser may contact BIA by telephone but any explanation of trespass must be provided in writing. If BIA determines that a trespass notice was issued in error, the notice will be withdrawn.

**§ 161.705 How long will a written trespass notice remain in effect?**

A written trespass notice will remain in effect for the same action identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

ACTIONS

**§ 161.706 What actions does BIA take against trespassers?**

If the trespasser fails to take the corrective action as specified, BIA may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other prop-

erty involved in the trespass. BIA may keep the property seized for use as evidence.

(b) Assess penalties, damages, and costs under § 161.712.

**§ 161.707 When will BIA impound unauthorized livestock or other property?**

BIA will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after 5 days of providing notice of impoundment if the trespasser failed to correct the trespass.

**§ 161.708 How are trespassers notified of impoundments?**

(a) If the trespass is not corrected in the time specified in the initial trespass notice, BIA will send written notice of its intent to impound unauthorized livestock or other property to:

(1) The unauthorized livestock or property owner or representative; and

(2) Any known lien holder of the unauthorized livestock or other property.

(b) If BIA determines that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, a public notice of intent to impound will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After BIA has given notice as described in § 161.707, unauthorized livestock or other property will be impounded without any further notice.

**§ 161.709 What happens after unauthorized livestock or other property are impounded?**

Following the impoundment of unauthorized livestock or other property,